UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1996/SR.32
24 May 1996

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Fifty-second session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 April 1996, at 3 p.m.

Chairman: Mr. VERGNE SABOIA

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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

The meeting was called to order at 3.20 p.m.

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(d) HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS (agenda item 9)

(E/CN.4/1996/8, 42, 43, 44, 45 and Add.1, 46, 47, 48 and Add.1, 49, 50 and Add.1, 51, 52 and Adds.1 and 2, 53 and Add.1, Corr.1 and Add.2, 105, 109, 116, 117, 137, 148; E/CN.4/1996/NGO/4, 10, 20, 28, 31, 34, 37, 43, 47, 51, 56, 64, 75; A/50/332, 685; A/CONF.177/20; E/CN.4/1995/48; E/CN.6/1996/11)

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS (agenda item 17)
(E/CN.4/1996/11, 14, 15, 89, 90, 92, 93 and Add.1, 94, 111, 118 and Add.1, 136, 138; E/CN.4/1996/NGO/38, 74; A/50/482, 681 and Add.1, 878; A/49/929)

1. Mrs. LIZIN (Chairperson of the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights) said that, nearly three years after the creation of the Board of Trustees and several months prior to the expiration of the mandate of its five members, the time had come to assess the action undertaken jointly by the Centre for Human Rights, the Board and the Coordinator of the Fund, a senior officer from the United Nations Development Programme (UNDP) on secondment to the Centre. Forty-two projects initiated in collaboration with the national authorities of the beneficiary countries or concerning a particular region or regions were currently under way in more than 30 countries. They included providing support for the establishment and strengthening of national institutions for the promotion and protection of human rights; encouraging human rights education; and helping to develop a human rights culture among the military. The total project budget was approximately $15 million. Furthermore, following recent needs assessment and project formulation missions - for example, to Papua New Guinea, Nepal, Bhutan and Bolivia, or the upcoming mission to South Africa - other projects would be undertaken, the execution of which would require additional resources of approximately $5 million. Thanks were due to the traditional donors (Colombia, Germany, Japan, Luxembourg, New Zealand and the Republic of Korea), and two new donors, India and South Africa.

2. As the Secretary-General frequently stressed, the promotion and protection of human rights and support for the democratic process of the rule

of law were the keystones of peace. From respect for those rights derived what was now known as sustainable human development, that is, development that provided the human being with the means for deciding his own future and meeting his present needs while preserving the choice of future generations.

3. In that regard, technical cooperation in the field of human rights deserved to be better known, recognized and supported. That was why the Board of Trustees had enthusiastically supported the Coordinator of the Fund in her decision to publish a brochure on its activities. The Fund helped States that requested assistance in strengthening their national capacities so that they could fully meet their responsibilities and obligations concerning the promotion and protection of human rights. Its work was carried out in cooperation with national authorities; it was not a substitute for the monitoring and investigating activities of the United Nations. She hoped the Fund's activities would be taken into account in the restructuring of the Centre for Human Rights. Its strengthening of national capacities in the field of human rights complemented the contributions of other United Nations bodies, making for a more rational utilization of resources and a much greater understanding of problems. It was for that reason that the needs assessment and project formulation missions were organized in close cooperation with the United Nations Resident Coordinators, who in most cases were UNDP Resident Representatives. UNDP field offices offered all the necessary support, and a growing number of projects were covered by joint formulation missions with UNDP; the Centre's "human rights" programme now tended to be included in the "Country Strategy Notes", prepared with UNDP support by all States receiving development assistance from the United Nations system.

4. Thanks to the development of procedures for technical cooperation in the field of human rights and respect for human rights, the Centre's activities were closely aligned with and complemented, all the efforts being deployed by the United Nations in that field, making it a serious and responsible partner on which both beneficiary and donor countries could count.

5. Mr. DENG, Representative of the Secretary-General on internally displaced persons, introduced his report (E/CN.4/1996/52 and Adds.1 and 2), saying that his activities had centred around four principal areas: a quest for a cause-oriented definition of the problem, appraisal of relevant standards in international law, evaluation of the role of international institutions and an action-oriented programme of country visits and dialogue with Governments and other pertinent actors.

6. There were a number of causes of internal displacement, but the most problematic were those related to internal conflicts, communal violence and systematic violations of human rights. Such causes nearly always involved cleavages, which often took the form of a national identity crisis based on race, ethnicity, religion, culture or class. Under those conditions, Governments considered the affected populations not as citizens whom they had a moral and legal obligation to protect and assist, but as enemies or part of the enemy camp, to whom they owed nothing.

7. The issue of legal standards was one of the principal concerns of his mandate. Working closely with specialized institutions and legal experts, he had finalized the compilation and analysis requested by the Commission and the

General Assembly, which examined the relevant provisions of international human rights law, humanitarian law, and refugee law by analogy, and their applicability to the needs of the internally displaced. The study substantiated the argument that while existing law covered many aspects of particular relevance to internally displaced persons, there were important areas in which the law failed to provide sufficient protection. Examples were provided in paragraph 9 of the report. There were also instances in which the internally displaced were not protected by international law owing to shortcomings inherent in the law. Moreover, with few exceptions, international law bound only States, not non-State actors, such as insurgent groups, under whose authority internally displaced persons could reside. Some States had not ratified key human rights treaties and/or the Geneva Conventions relating to the protection of victims of international armed conflicts and the Additional Protocols thereto, and were therefore not formally bound by their provisions. Finally, the 1951 Convention relating to the Status of Refugees did not apply directly to internally displaced persons, although their conditions were similar.

8. Controversy persisted among legal experts and specialized agencies as to whether legal reform was necessary or whether the problem was merely one of implementation. There were those who believed that any attempt to develop new standards risked narrowing the existing scope of coverage. Others held that there was a need to consolidate the existing norms, which at present were too dispersed and diffuse to be effective. He favoured developing a legal framework that might take the form of a statement of principles, a declaration, a code of conduct or an instrument of a more legally binding nature. He recommended the progressive process but believed that the time had come to take the first steps. It was encouraging that the Assembly had called on the Commission to consider the question of establishing such a framework.

9. With regard to institutional arrangements, while it was recognized that there was an institutional gap in the area of protection and assistance for internally displaced populations, many organizations had become involved with them. Given that there was no political will to create a new organization and that it was unlikely that an existing institution would be mandated to assume full responsibility, the only option was that of a collaborative arrangement among the various agencies and organizations whose mandates and activities were relevant to the problems of internal displacement. That collaborative approach raised the issue of coordination, but institutions were now in place that promised to bring constructive coherence to the international system. The focal points for those arrangements were the Under-Secretary-General for Humanitarian Affairs, the Inter-Agency Standing Committee and its task force on Internally Displaced Persons and at the country level, the Resident Coordinators, who were also often UNDP Resident Representatives.

10. His office had cooperated fully with the Department of Humanitarian Affairs and was in contact with the task force and all the United Nations agencies and other intergovernmental, regional and non-governmental organizations whose mandates and activities related to the internally displaced. It had also begun to strengthen ties with regional bodies; he

welcomed the fact that the Inter-American Commission on Human Rights of the Organization of American States had decided to appoint a rapporteur on the subject.

11. In order to play a catalytic role, focusing on advocacy and awareness-raising, to date he had visited 10 countries (the former Yugoslavia, Russian Federation, Somalia, Sudan, El Salvador, Sri Lanka, Burundi, Rwanda, Colombia and Peru) and had reported to the Commission and the Assembly on the situation of displacement in those countries. On such visits, of which a typical programme was described in paragraph 35 of the report, the premise of his dialogue with Governments was that internal displacement was primarily an internal affair which fell within domestic jurisdiction and therefore the sovereignty of the State concerned. State sovereignty, however, entailed responsibility for the security and welfare of the citizens. If a State lacked the capacity, it was expected to call on the international community for assistance to supplement its efforts. If States failed to live up to their obligations, with the result that large numbers of people fell victim and their very survival was endangered, then the international community had the responsibility to hold the States accountable and obtain access to provide the protection and assistance needed. Ideally, his approach was to address all three phases of the problem - causes, consequences and remedies. That type of approach enabled responses to be defined in the fields of prevention, protection and assistance.

12. In order to carry out the tasks inherent in his mandate, he needed material and human resources beyond what was available at the Centre for Human Rights. To fill the gap, he had sought and received material support from Governments and foundations, and technical assistance from academic and research institutions. It was to be hoped that others would come forward with assistance for the effective discharge of his mandate.

13. The international system had made considerable progress in responding to the needs of the internally displaced. The limits on what the system could do had also become evident. It was important to remember that behind statistics, concepts and operational schemes were individual human beings, clustering in camps in large numbers, dispersed in the wilderness, submerged in communities of the equally needy or otherwise hidden away from the limelight of international media attention and suffering silently in degrading isolation. Their only hope was global respect for a universal notion of human dignity. That was why humanitarian and human rights concerns should be seen as intimately connected, and why dialogue with Governments and other actors must be seen as a matter of great importance.

14. Mrs. COOMARASWAMY, Special Rapporteur on violence against women, said that the report she was submitting this year (E/CN.4/1996/53, Add.1 and Corr.1 and Add.2) focused specifically on violence in the family. The statistics in paragraph 62 revealed the nature and extent of violence against women in the family - violence that cut across nation, ethnic community, class and caste. Such violence was a violation of human rights. In the light of State inaction and the gender-specific nature of domestic violence, domestic violence should be classified as a violation of basic rights rather than a mere criminal concern.

15. International legal interpretations and norms increasingly tended to define more clearly the positive role and responsibility of the State in preventing abuses by para-statal or private actors, as attested, for example, by the Declaration on the Elimination of Violence against Women. The doctrine of equal protection imposed a duty on States not to discriminate on a number of specified grounds, including gender. Failure to prosecute offenders might constitute the denial of equal protection of the law for women victims of violence. There were others who argued that domestic violence was similar to torture and therefore required a different treatment by the international community. Lastly, the Committee on the Elimination of Discrimination against Women, in General Recommendation 19, had argued forcefully that violence against women in itself constituted discrimination within the meaning of the Convention on the Elimination of All Forms of Discrimination against Women.

16. Violence against women in the family manifested itself in myriad forms. The most common form of domestic violence was woman-battering, which could sometimes lead to murder. In addition, women who were victims of domestic violence were 12 times more likely to attempt suicide, and survivors of woman-battering were often compelled to flee their homes; such women made up a high percentage of the homeless population. Another type of violence perpetrated in the home was marital rape. Very few countries had legislation for marital rape, and most countries were of the belief that the State should not intrude into the personal lives of married couples.

17. Incest, or intrafamilial child sexual abuse, was another pernicious crime. Incest was universally legislated against, but few countries had machinery in place for its detection and prosecution. The victim's rights were sacrificed as a result of secrecy, court proceedings that required forensic evidence, and evidentiary procedures. Violence began at the foetal stage, as in many countries the female foetus was aborted after sex determination tests. The one-child policy in China, also led to discrimination.

18. She was gravely concerned about the practice of female genital mutilation. It appeared that legislation was being brought forward to criminalize the practice in societies where immigrant communities engaged in it. However, in countries where it was regarded as a custom, there was still more work to be done.

19. Another important issue was violence against domestic workers, which would be researched and analysed in her next report. The Commission should take note of the fact that in the case of Sarah Balabagan, the Filipina maid accused of killing her employer after he had raped her, she had sent two communications to the Government of the United Arab Emirates, the first when Balabagan was sentenced to death and the second when the death penalty was commuted. The fact that the Government had replied to those letters provided an opportunity for initiating a dialogue. States must take steps to prevent violence against domestic workers in conformity with the ILO Migrant Workers Convention.

20. The report included a chart of national legislation to control violence in the family, and Addendum 2 comprised a framework for model legislation on violence in family and interpersonal relations. States should enact specific

legislation making domestic violence a crime providing a broad range of flexible and speedy remedies, both penal and civil; fostering the ability of the police to assist victims and apply the law effectively; and offering protection so as to prevent such incidents from recurring, for example, through protection orders. Community services should also be developed that allowed women support and sustenance. In Malaysia, for instance, hospitals had established "one-stop centres" that gave battered women access to doctors, police and social workers. The Commission should pass a resolution requesting States to adopt special domestic violence legislation and to set up victim support services.

21. She had attended the Fourth World Conference on Women, and welcomed the fact that the Beijing Declaration and Programme of Action had reiterated and reinforced the Declaration on the Elimination of Violence against Women. She had also visited Japan and the Republic of Korea to investigate the problem of military sexual slavery in wartime. The conclusions and recommendations of that mission were before the Commission as Addendum 1 to the report. She had also received comments from the Japanese Government and various groups.

22. In 1996, she hoped to make field visits to other regions, to study prostitution and trafficking in eastern Europe, domestic violence in Latin America, violence against women migrant workers in the Western European and other regions, and violence against women during times of armed conflict in Africa.

23. She paid special tribute to the courage of the victims she had met and to the professionalism of her colleagues, and welcomed the encouragement and support of many Governments. She hoped that greater resources would be made available to the Centre for Human Rights to ensure that she could continue the work required by her mandate. Eliminating violence against women, however, required more than an ad hoc mechanism, which was what she as Special Rapporteur remained. States should consider enacting the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women and work towards an international convention on the elimination of violence against women. The international community could not remain indifferent to the tragedy of women victims of violence.

24. Mr. SINGH (India) said that consideration of alternative approaches for the encouragement of human rights should give priority to tolerance and pluralism, which should have a central place in the work programmes of the Centre for Human Rights and in the mandates of the Commission's mechanisms. The Commission should adopt by consensus the draft resolution on tolerance and pluralism, which was before it for the first time. The Vienna Declaration had already stressed the dangers of intolerance, violence and especially terrorism. Since then, the international community had recognized the need for action that was not only national but international. The time had come to recognize that terrorist acts committed by individuals or groups constituted a new, second-generation agenda for human rights covering violations by non-State actors.

25. The Commission should also take strong and concrete action to protect women from discrimination and violence. It should take into account the recommendations of the Special Rapporteur in her report on violence against

women (E/CN.4/1996/53 and Add.1 and 2) and consider establishing a separate agenda item on the promotion of women's basic rights. For its part, India was attempting to improve the status of women in all respects. The Constitution had been amended to reserve one third of all seats for women in grass-roots and district-level bodies; a commission for women's rights had been set up, and a national plan for the empowerment of women created.

26. The Vienna Declaration had reaffirmed the important role played by national institutions in the promotion and protection of human rights, in particular through advisory, information and education services. He welcomed the priority attached by the High Commissioner and the Centre for Human Rights to the establishment and strengthening of national institutions, and the High Commissioner's decision to appoint an expert adviser on the question. It was time for the Commission to formalize the participation of national institutions in its sessions.

27. As regards the activities of the Centre, in the course of its restructuring it was important to ensure respect for the principle of the indivisibility of human rights, which had been enshrined in the Vienna Declaration. Clearly, the restructuring process could not take place without the approval of the Commission, which should set up a working group to establish priorities and objectives for the Centre's future mandate.

28. The Centre must continue to be financed from the regular budget, because excessive dependence on voluntary contributions would undermine its impartiality. The financial crisis was particularly affecting the staffing pattern of the Centre, which depended increasingly on junior professional officers engaged under short-term contracts. Initially, the United Nations system had employed junior officers primarily in the field. Increasingly, however, the Centre was utilizing them in politically sensitive areas. In the legislative branch, for example, out of 15 officers, five were junior officers and two more had been. Staff recruitment should in principle continue in accordance with equitable geographical distribution, and with greater transparency. That would enable those developing countries that wished to do so to derive greater benefit from the junior officer programme.

29. Regarding the human rights database being established by the Centre, the High Commissioner should ensure that information collection was transparent and accurate and should inform the Commission about the procedure followed and how access to information could be obtained. He should also study the pattern of information flows on human rights violations to the mechanisms of the Commission with the objective of identifying imbalances. The overall objective must remain the creation of impartial and credible human rights mechanisms that were representative of all geographical regions.

30. Regarding the Centre's technical cooperation programme, some projects had been developed without consulting the States concerned. He urged the High Commissioner to ensure that guidelines were strictly adhered to. The Voluntary Fund for Technical Cooperation in the Field of Human Rights and its Board of Trustees should also ensure that only those projects requested by States were considered. Greater efforts should be invested in strengthening, streamlining and coordinating internal procedures for engaging experts and

consultants. Finally, given the limited resources of the regular budget and the Voluntary Fund, the Centre should attach priority to integrated technical cooperation programmes designed to develop and strengthen national institutional capacities for the promotion of human rights which were adapted to the specific requirements of requesting countries. The Centre's decision to give priority to the developmental approach in its technical cooperation programmes, and the High Commissioner's decision to strengthen those programmes through the appointment of a coordinator of the Voluntary Fund, were very welcome.

31. Mr. DE ROUX (Colombia) said that in 1995, his Government had continued its activities on behalf of human rights. A national human rights investigative group had been established in the Office of the Attorney General of the Nation, which had enabled the leaders of the most dangerous "private justice" or "self defence" groups to be found and brought to justice. A committee comprising representatives of various institutions and sectors had finished drafting a new code to reform the military criminal justice system, aimed among other things at combating impunity, which was to be submitted shortly to Congress. The regional justice system, or "justice without a face", had undergone changes to secure greater respect of the rule of law. Congress had before it a draft law authorizing the payment of reparations recommended by the Human Rights Committee and the Inter-American Commission on Human Rights; that body's out-of-court settlement procedure had permitted the truth about the massacre at Trujillo in 1990 to come to light.

32. Steps had been taken to help populations displaced by violence. A human rights network had been set up to receive complaints and provide follow-up. Action had also been taken to ensure the protection of political and trade union activists, human rights defenders and witnesses of human rights violations. A number of initiatives had been taken to teach human rights and international humanitarian law to members of the armed forces and the police. Lastly, an interministerial committee had been set up to foster compliance with the recommendations of international human rights bodies. According to a recent report of that committee, the Government's initiatives were for the most part in keeping with the recommendations made by the rapporteurs of the Commission on Human Rights.

33. As a result of those efforts, there had been a clear decline in the number of homicides, enforced disappearances and instances of torture attributable to members of the armed forces, the police or other State bodies, as had been noted not only by the Government but also by national and international non-governmental organizations. None the less, the second half of 1995 had seen renewed activity on the part of self-defence or private justice groups in various parts of the country often in the form of reprisals to guerrilla activities and sometimes in secret collaboration with members of the armed forces. The Government had therefore made it a priority to combat that problem.

34. Violations of international humanitarian law committed by guerrilla groups were also of particular concern. If human rights violations and the practices of the "dirty" war were to be eliminated by mobilizing all the forces of civil society and the State, the relevant national and international situations must be considered objectively and in a balanced fashion, taking

into account the behaviour of all the parties to the internal armed conflict. Vigilance focused only on members of the armed forces would polarize public opinion and sow distrust among the guerrillas' victims.

35. Colombia had acceded to Protocol II of 1977 additional to the Geneva Conventions relating to the protection of victims of international armed conflicts and had signed an agreement with the International Committee of the Red Cross to facilitate and guarantee that body's humanitarian action in the country. It also planned to recognize the competence of the International Fact-Finding Commission established under article 90 of Protocol I to the Geneva Conventions, so that it could investigate violations of international humanitarian law committed during the internal armed conflict. Switzerland, as the depositary of the Geneva Conventions, would receive notification in the next few days. The President of Colombia had recently invited the international community and Governments of friendly countries to put pressure on the guerrillas to sign humanitarian agreements.

36. The High Commissioner for Human Rights had been invited to open a permanent office in Colombia to provide advisory services and help the country better to protect and promote human rights. The office would also be able, as the High Commissioner had hoped, to receive complaints, as long as they concerned violations of humanitarian law committed by the guerrillas as well as violations of human rights.

37. Colombia was a democratic country with a constitutional government, but it was in the throes of a serious internal armed conflict. The Government was adapting to a changing situation and, in order to be able to continue to make progress, needed the support of the international community.

38. Mr. DIENG, independent expert on the situation of human rights in Haiti, introduced his report (E/CN.4/1996/94), saying that since the presentation of his report to the General Assembly at its fiftieth session, the major event in Haiti had been the transfer of power on 7 February between two democratically elected presidents. The other no less historic event had been the presentation to President Aristide of the report of the National Commission of Truth and Justice (CNVJ) charged with investigating the human rights violations committed between 29 September 1991 and 15 October 1994 both in Haiti and abroad. That report had unfortunately not been made public, but the work of the CNVJ would help to prevent future atrocities such as those which the Haitian people had undergone.

39. The situation in Haiti was mixed, since despite the progress made since the return of President Aristide in October 1994, weaknesses persisted, particularly in the judicial system and the police. Vigilance was therefore necessary, and Haiti should continue its efforts to clean up institutions and restore the rule of law after years of a loathsome military regime. The election of President René Préval was part of that effort of reconstruction.

40. Violations of human rights had diminished greatly, but common crime had increased sharply. That state of affairs was not only the result of scandalous socio-economic conditions but was also linked to shortcomings in the judicial system. Even today, judges were afraid to pass sentence on

former members of the military regime out of fear of reprisals as soon as the troops deployed under the aegis of the United Nations left the country. There were cases of arbitrary or illegal arrest or detention, and over 85 per cent of detainees were still waiting for their cases to be heard and living in unacceptable conditions.

41. The Haitian Government, constrained by an International Monetary Fund structural adjustment programme, was incapable of guaranteeing the slightest enjoyment of economic, social and cultural rights. The international community must therefore redouble its efforts to help the Haitian people take up the challenge of peace, democracy and human rights, and the mandate of the International Civilian Mission in Haiti (MICIVIH) should be extended beyond 31 August 1996. If that were not possible, the Centre for Human Rights should arrange to take over from the Mission so that the political and economic reforms could continue.

42. He welcomed the establishment of a new Directorate-General of the Haitian police, the creation of a Public Safety Office and the nomination of an Inspector-General, which had made it possible to take punitive action against members of the police. MICIVIH ensured that the population was advised of the investigations and sentences, and the Minister of Justice had stated at the previous session that everything possible would be done to establish a new climate of security. It was also essential to step up training activities for police staff, with the support of the civilian police forces of the United Nations Mission in Haiti, MICIVIH and the International Criminal Investigative Programme (ICITAP), so as to prevent future abuse and put an end to impunity. At the same time, the Ministry of Justice was to undertake a massive information campaign to explain the activities of the national police and show the population that it had nothing in common with its predecessors.

43. As to the judicial system, structural weaknesses persisted. Legal reforms were not progressing, and the administrative status of justices of the peace had to be confirmed and other judicial officers made to feel secure, particularly in rural areas. In that field as well, education was needed, training "barefoot jurists" in rural areas.

44. Protection of the rights of the child remained a major cause for concern, as the odious practice of the employment of children as servants continued. The Government must institute strict penal sanctions against the practice, which affected more than 200,000 children, and an information campaign should be launched with the support of the United Nations Children's Fund (UNICEF), the Centre for Human Rights and MICIVIH. Haiti should ratify the International Covenant on Economic, Social and Cultural Rights, the Optional Protocols to the International Covenant on Civil and Political Rights and the Convention against Torture. When the penal code was revised, provisions punishing crimes against humanity should be drafted.

45. If he had chosen to stress problems in the police and justice systems, it was because it was urgent to preserve law and order and guarantee safety while fully respecting human rights. As justice was the cornerstone of democracy, judicial reform should be more dynamic and more visible. Haiti should also be

given not only intellectual assistance but logistical and material help. The 150,000 pages of documents seized in October 1994 on the premises of the Front pour l'avancement et le progrès haïtien (FRAPH) should be returned to the Haitian authorities.

46. Haiti was the poorest country in the Americas and one of the poorest in the world; its situation was fraught with danger because of deplorable economic and social conditions. The support of the international community and greater understanding on the part of the Bretton Woods institutions would help to defuse the situation and enable Haiti to exorcise the demons of the dictatorship.

47. Mrs. PINTO, independent expert on the situation of human rights in Guatemala, introduced her report (E/CN.4/1996/15), recalling that in November 1995 Mr. Alvaro Arzú had been elected President of the Republic of Guatemala with 51 per cent of the vote. According to the 206 foreign election monitors, the voting had been marred only by a few isolated incidents.

48. Regarding the human rights situation, the number of complaints received by the Human Rights Procurator had increased by 22 per cent between 1994 and 1995. By 31 December 1995, the United Nations Mission for Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), established on 21 November 1994 at the request of the Government and of the Unidad Nacional Revolucionaria Guatemalteca (UNRG), had received 7,700 complaints, many of which concerned violations of the right to life. The Archdiocesan Human Rights Office (ODHA) of Guatemala had registered 1,782 cases of violations of the right to life. As to the Committee against Torture, in November 1995 it had been of the opinion that torture was endemic in Guatemala and that children were not spared. In April 1996, the Human Rights Committee had expressed its concern at the systematic violations of the right to life and the absence of a policy for combating impunity.

49. The human rights situation in Guatemala had therefore not improved, despite a large United Nations presence (in addition to the independent expert, MINUGUA and the Moderator, Mr. Jean Arnault) and despite several important agreements reached between the Government and UNRG. It was therefore clear that peace was a necessary but insufficient condition for ensuring respect for human rights. Everything depended on the attitude of the parties to the conflict.

50. Although there had been undeniable progress in the 10 years since the military had relinquished power to civilians, the army continued to play a decisive role in public affairs. In March 1996, for example, the Supreme Court of Justice had decided that the case of the extrajudicial execution of the anthropologist Myrna Mack Chang, who was not involved in the fighting, fell within the jurisdiction of the military courts. Yet, it had apparently been decided some days earlier that the soldiers involved in the massacre on 5 October 1995 of 13 unarmed civilians, including two children, in the "Aurora 8 de octobre" returnee community, Xamán (paras. 26-29 of the report), would be turned over to the civil courts. The authorities had, however, stated that that decision would not establish a precedent.

51. That violation of human rights - the most serious violation involving returnees - had demonstrated that some individuals were still psychologically willing to commit such crimes. Furthermore, it had been established that the detachment responsible for the massacre included at least one juvenile, proving that the practice of forced recruitment had not completely disappeared.

52. With regard to the military commissioners, while the legislature's decision to demobilize and then abolish them should be commended, it had unfortunately not prevented them from continuing their human rights violations, and the arrest warrants issued against two of them - Raúl Martínez, who had taken five international civil servants hostage, and Victor Román, suspected of the murder of Pastor Saquic Vásquez - had still not been executed, while members of the Kakchiquel sanctuary continued to receive death threats from Román's collaborators and from the Jaguar Justiciero (Jaguars of Justice) organization.

53. On the subject of militarization, no one had been able to explain to her why the Civilian Self-Defence Patrols (PACs) had not been abolished after the truce came into effect nor what their functions ever were, since they no longer had a counter-insurgency role to play. The demilitarization and subordination of military power to civilian rule would go a long way towards ushering in a true democracy that did not regard citizens as enemies but ensured the effective protection of their fundamental rights. To attain that objective, it was clearly not enough to teach human rights in military academies.

54. The marked increase in the armed population, where bearing arms was condoned by the Constitution, was supposed to protect against violence in society, but in fact led to a subtle "social cleansing" that went largely unpunished. In February 1996, for example, an average 30 kidnappings a day had been reported throughout the country.

55. Not only were the police and security forces militarized, they also lacked professionalism. There had been numerous accusations of corruption within the national police. In February 1996, 118 police officers suspected of corruption had been dismissed, but had been reinstated two months later without being brought to trial.

56. The climate of violence was such that people meted out their own justice; quite recently, a teenage boy had been burnt alive after being beaten. Such incidents demonstrated that the population was verging on despair. Given the situation, the judiciary must be strengthened and its independence guaranteed. To combat impunity, however, the Government was merely increasing the number of special courts and amending existing norms. No one was safe from the violence, and many cases had never been cleared up: for instance, the killing three years earlier, of the owner of the newspaper El Gráfico, Jorge Carpio Nicolle, a close relative of the former President; that of the President of the Court of Constitutionality Epaminondas Gonzáles Dubón, for which two people had been sentenced without any investigation into possible political motives; and that of the student Mario Alioto López Sánchez, by policemen. The ad hoc commission created to investigate the latter case had still not submitted its findings. Likewise, the deaths of

Comandante Everardo, Karen Fleischman, José Sucunú Panjoj, Mariano Pérez, and others had still not been explained. The investigation into the 1982 Dos Erres massacre was bogged down because no representative or public prosecutor wanted to handle it. In addition to the judges, examining magistrates and lawyers who had been victims of threats and attacks and were cited in the report, there were Nery Fernando López, René Guillermo Conje Palacios, Attorney-General Ramses Cuestas Gómez, Ramiro Contreras and Judge José Vicente Gonzales, who had been shot and killed at his home.

57. Those incidents bore witness to the profound fragmentation of Guatemalan society. The indigenous groups, who were in the majority, were marginalized, and the communities in resistance (CPR), returnees, refugees and displaced persons were frequently considered by society at large and the army in particular to be potential guerrillas. As to the Government, at the very best it ignored them. Women were even more vulnerable to violence, given that they lived in a society characterized by excessive machismo. As for children in disadvantaged groups, their situation was tragic.

58. Social inequalities had become more acute: 2 per cent of landowners owned 65 per cent of the usable land, and 10 per cent of the population received 44 per cent of the national income, while 80 per cent lived in poverty and 59 per cent in extreme poverty. The Government's response to peasants who had seized farms in order to claim minimal rights was to have them evicted by the police and the Rapid Reaction Force (FRI), resulting in deaths and disappearances.

59. She had no doubt that the new Government intended to improve things, but her mandate required her to apply the same rigour to all her assessments, whether they dealt with plans or actions. The Government of President Arzú had told her it would try to have the Commission continue its consideration of Guatemala under its agenda item on advisory services, and denied planning to get her mandate abolished. The Commission could not mortgage the future of Guatemalans. It must make the Government understand that if the latter's decisions were accompanied by action consistent with the establishment of peace and respect for human rights, the Commission would be happy to report that it had fulfilled the objective of the Charter. For the time being, however, and unless the situation improved dramatically, the Commission should continue to follow events very closely by means of a mechanism completely independent of the parties to the peace process, which could consider the human rights situation and make recommendations in a report that the Commission would examine under the appropriate agenda item.

60. Mr. NFOR GWEI (Cameroon), speaking on behalf of the National Commission on Human Rights and Freedoms of Cameroon, which he chaired, and on behalf of the national human rights institutions of the African region, said that his Commission was endeavouring to promote and protect human rights, inspired by the Declaration and Programme of Action of the World Conference on Human Rights, by the third International Workshop on National Institutions for the Promotion and Protection of Human Rights (Manila, 18-21 April 1995), the Principles relating to the status of national institutions (the Paris Principles) and the instrument which had created the National Commission.

61. At the regional level, national human rights institutions in Africa had entrusted Cameroon's National Commission with the arduous task of planning, preparing and hosting the first African Regional Conference of National Institutions for the Promotion and Protection of Human Rights. The Conference had taken place at Yaoundé in February 1966, under the auspices of the Commission on Human Rights and the Centre for Human Rights, and had brought together participants from Cameroon, Central African Republic, Chad, Ghana, Malawi, Morocco, Senegal, South Africa, Togo and Tunisia. National institutions in the process of being created, such as those of Burundi and Rwanda, had also been represented, and there had been observers from African and French non-governmental organizations and the Governments of Cameroon, Egypt and Morocco. The importance of the Conference had been underscored by the participation of high-level delegations from the Centre for Human Rights, France's Advisory Commission on Human Rights, the Canadian Human Rights Commission and the African Commission on Human and Peoples' Rights.

62. The objectives of the Conference were to initiate regional cooperation among African national institutions; to devise strategies to strengthen national institutions in the region; to encourage States in the region to create their own national institutions; to examine ways and means of solving problems peculiar and common to national institutions in the region; and to see how best to promote and protect human rights and foster democracy in Africa. The Conference had achieved more than the stated objectives, as attested by the Yaoundé Declaration. It had established a coordinating committee of African human rights national institutions and had elected him as its first chairman. That initiative, part of efforts towards preventive diplomacy, needed the full support of United Nations bodies and all friends of Africa. The Conference had also provided an opportunity to conduct an intense media campaign on human rights.

63. The National Commission had continued during the past year to organize a series of human rights training seminars for administrative and law enforcement officers and jurists, who could then offer similar training to their peers and subordinates. It had also encouraged religious bodies to spread the message of human rights to their congregations.

64. The National Commission had continued to investigate human rights violations. It handled a growing volume of complaints, which proved that the awareness-raising campaign was working. In keeping with its mandate, the National Commission periodically inspected prisons and detention centres such as police and gendarmerie cells to see the conditions in which prisoners and detainees were kept. He drew the attention of the Commission to the enormous financial, material and technical problems confronting national institutions in the African region. The coordinating committee of African human rights institutions would not be able to function effectively without help from the United Nations and the international community. The national institutions needed a special status to allow them to speak at such forums as the Commission on Human Rights.

65. Mr. LAKATOS (Hungary) said that the scale and complexity of today's humanitarian crises were a reflection of the instability of the age. The exile of millions of refugees was a tragic consequence of the inability or unwillingness of certain Governments to fulfil their responsibility of

ensuring respect for human rights and fundamental freedoms. His Government was firmly convinced that an appropriate human rights policy was the most effective way to address the potential problem of refugee outflows.

66. The most satisfactory means of solving refugee problems was to give refugees temporary protection, followed by voluntary repatriation with international monitoring as the preferred durable solution. Prevention was the most effective form of protection for people in danger of becoming refugees. Preventive protection as a part of a global peace-building process should be directed at the root causes of the problem, which went far beyond humanitarian concerns. The international community should reaffirm its commitment to the principle that human rights could not be considered as an exclusively internal affair and that States were accountable for violations of international human rights standards. That emphasis should not, however, detract from the core principle of non-refoulement.

67. The success of prevention depended on effective early warning of imminent displacements, and thus on the systematic collection and analysis of observations from potential refugee-producing areas. The most reliable method for anticipating problems was through direct human rights monitoring in the field. International presence could involve emergency humanitarian relief, assistance in strengthening democratic institutions, promoting dialogue and securing respect for human rights and humanitarian law.

68. The lack of protection within national borders, of which refugee flows were a symptom, also affected the internally displaced. Recent statistics indicated that while the number of refugees had declined, the numbers and categories of those in need of international protection were in fact expanding, and almost half of the persons of concern to the Office of the United Nations High Commissioner for Refugees (UNHCR) were to be found within their own country. The fact that in recognizing that trend, the international community had shown an increasing readiness to become involved in situations of internal displacement when Governments did not meet their responsibilities should be welcomed.

69. Those situations - which varied from one country to another, were frequently complex and resulted from a number of different causes - required the cooperation of several organizations to cover both protection and assistance. Even though international human rights bodies no longer considered the internally displaced to be outside their jurisdiction, most of them still did not have the capacity to assume protection functions in humanitarian emergencies. A comprehensive approach and closer collaboration between the humanitarian and human rights components of the United Nations system should therefore be encouraged. In that regard, the decision of the Centre for Human Rights to begin joint training programmes in human rights law for both UNHCR and Centre staff was a step in the right direction. Protection and assistance mechanisms should also be coordinated with mechanisms and procedures for preventive diplomacy, including peace-building and peace-keeping.

70. He welcomed the appointment of the representative of the Secretary-General on internally displaced persons but regretted the

considerable gap between the objectives of the representative's mandate and the human and material resources at his disposal. He shared the concern of the High Commissioner for Refugees about the need to develop a legal framework for the protection of internally displaced persons in order to promote the success of integrated international operations. Most of the major refugee displacements of the 1990s had been triggered by internal conflicts over questions of ethnic identity. It was therefore essential that the peace agreements should include clauses guaranteeing the promotion and international protection of minority rights.

71. Mr. KHAN (France), speaking on behalf of the French Advisory Commission on Human Rights, said that more than ever before, the promotion and protection of human rights was the one fight worth fighting. Human beings had rights that prevailed over any legislation, and that "law of rights" which was all human rights was universal and indivisible. The solemn proclamation of those rights must be concretely translated into their effective implementation. That was the mission which the national institutions for the promotion and protection of human rights, such as the Advisory Commission, had set for themselves, undertaking a permanent dialogue between the State, the authorities and civil society, including non-governmental organizations.

72. The role of those institutions had been recognized and specified by resolutions adopted successively by the Commission on Human Rights, the Economic and Social Council and the General Assembly. The World Conference on Human Rights had given them an important place in all its work, and at its fiftieth session, the Commission, in its resolution 1994/54, had requested the Secretary-General to prepare a report concerning possible forms of participation by national institutions in United Nations meetings dealing with human rights. His Commission recommended a formula that would enable national institutions to participate in those meetings, including those of the Commission on Human Rights and its subsidiary bodies, as distinct entities with observer status.

73. There were currently 44 national institutions throughout the world established in conformity with the Paris Principles, and the establishment of 17 others had been announced. They had all met at Manila in April 1995, and the next international meeting would probably be held in Latin America in early 1997. In the meantime, regional meetings had taken place at Strasbourg and Yaoundé. Held under the auspices of the Centre for Human Rights, they were described in reports submitted to the Commission. The Centre also offered a technical assistance programme to existing and embryonic national institutions. At the same time, the Advisory Commission offered a training workshop specifically for leaders and members of national institutions, particularly from Africa, in a bilateral cooperation framework.

74. The Advisory Commission had just submitted its seventh annual report, entitled, "1995: the struggle against racism and xenophobia, exclusion and human rights", which described racism in France during 1995 and made constructive proposals. In October 1995 it had received the Special Rapporteur on contemporary forms of racism, racial discrimination, and xenophobia and related intolerance and had held a very fruitful dialogue with him. The fact that the Advisory Commission paid particular attention each year to the phenomena of racism and xenophobia was not so much because the

situation was more serious in France than elsewhere as to ensure that the public authorities took effective action and France continued to set a good example.

75. The Advisory Commission would play a full part in the Third Decade to Combat Racism and Racial Discrimination and in the convening of a world conference against racism. It was active in the Consultative Commission on racism and xenophobia of the European Union, which had drawn up a joint strategy for combating racism and xenophobic violence in the Union's 15 member States and for encouraging convergence between different countries' bodies of legislation and increased legal assistance among member States. It was participating in the Plan of Action for the United Nations Decade for Human Rights Education. Prevention, however, must be accompanied by fair and strict punishment of all violations, which was why the Commission had proposed useful suggestions at the time of the creation of the international war crimes tribunals for the former Yugoslavia and Rwanda.

76. The Advisory Commission was working towards implementation of the Convention on the Rights of the Child; adoption of a guidance and planning law to combat exclusion and widespread poverty; and better treatment of foreigners whose freedom or lives were threatened. Every day, it tried to add another stone to the edifice of human rights in France and elsewhere.

77. Mr. TARRE MURZI (Venezuela) deplored the fact that in the late twentieth century, there were still many States which had not the slightest respect for human rights. It was within the United Nations that the political and diplomatic behaviour should originate which would make it possible to enhance political freedom and progressively improve economic and social rights. Much remained to be done in certain countries in Asia, Africa and Latin America. Some Western nations, which prided themselves on being civilized democracies, also offered horrifying examples of lack of respect for human rights. They should be made to bear the full weight of well-deserved moral sanctions, by condemning violations of the most fundamental human rights everywhere.

78. The argument that the concept of human rights was not universal because it was too far removed from the traditions of certain Asian, African or Latin American countries was not acceptable. Respect for human dignity took precedence over all mores and customs that violated individual freedom and the right to democratic freedom, political plurality and popular participation.

79. It was a new political and ideological world that was emerging after the fall of the autocratic and despotic regimes of the past. A State where the rule of law was strong should encourage the participation of capital and labour alongside but under the direction and supervision of State and government bodies, in a climate of democratic debate. No State could pride itself on being a democracy, or on having an exemplary rule of law, as long as various forms of racial discrimination and segregation in employment, voting rights and freedom of the press persisted. Governments which flouted the fundamental rights of the individual should be categorically condemned by the international community.

80. The CHAIRMAN invited delegations wishing to do so to exercise the right of reply.

81. Mrs. FERRARO (United States of America) denounced the intellectual dishonesty and bravado which had characterized the statement made at the previous meeting by the Minister for Foreign Affairs of Cuba. What should one expect from a country which shot down planes in international airspace and coldly snuffed out four human lives? The Cuban Minister had pretended not to know why the economic embargo had been imposed on his country; he had insisted on Cuba's respect for its international obligations, and wanted people to believe that the Cuban people enjoyed all their democratic rights. In reality, most of the opposition leaders had been arrested and, by imposing inhuman living conditions on the people, the regime was forcing them to flee to other countries. The Minister's statement was an insult to the international community and a vain attempt to divert attention from the human rights situation in Cuba.

82. Mrs. HERNANDEZ QUESADA (Cuba) said that the incident of the planes shot down in Cuban airspace had already been considered by another body and did not fall within the Commission's competence. The Cuban Government had to react to the violation of its airspace; there had been violations of that type in the past, which the United States Government had known but done nothing about. Incursions into Cuban airspace always received a lot of media attention, and the pilots were welcomed as heroes in the United States. The determination to continue in the path of socialism expressed by Cuba's Minister for Foreign Affairs reflected the legitimate desire of 11 million Cubans, who periodically reaffirmed their support for the Government.

The meeting rose at 6.10 p.m.